IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH WALTHOUR, : CIVIL NO. 3:07-CV-0443

Plaintiff : (Judge Rambo)

v. : (Magistrate Judge Carlson)

FRANKLIN J. TENNIS, et al.,

:

Defendants

ORDER

Before the court is a January 6, 2011, report of the magistrate judge to whom this matter was referred. Objections to the report and recommendation were due no later than January 24, 2011. To date, no objections have been filed.

Therefore, upon independent review of the record and applicable law, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts in part and rejects in part the report and recommendation of Magistrate Judge Carlson.
- 2) Defendant Yarnell's motion for summary judgment (doc. 47) is granted with respect to the federal Eighth Amendment claim.
- 3) The court declines to exercise supplemental jurisdiction of Plaintiff's state law negligence claim pursuant to 28 U.S.C. § 1367(c)(3).
- 4) The Clerk of Court shall enter judgment in favor of Defendant Yarnell and against Plaintiff on the Eighth Amendment claim and close the file.
- 5) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.

s/Sylvia H. Rambo
United States District Judge

Dated: February 2, 2011.